

TODD W. EDDINS, #5544
1001 Bishop Street
Pauahi Tower, Suite 1320
Honolulu, Hawaii 96813
Telephone No. 808 538.1110
Facsimile No. 808 528.2440
E-Mail: Eddins@Eddinsdefense.com

Attorney for Defendant James Troiano

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00261 HG
)	
Plaintiff,)	MEMORANDUM OF LAW IN
)	SUPPORT OF MOTION
vs.)	
)	
JAMES TROIANO, (01))	
)	
Defendant.)	
)	
)	
)	
)	
)	
)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION

The prosecution has provided FRE 404(b) notice that it intends to elicit evidence "linking" Defendant James Troiano to a burglary of John Klatt's residence on April 13, 2005. In a January 3, 2006 letter to defense

counsel, the government asserts that Mr. Klatt's license was stolen during the burglary and that "defendant Troiano used [the license] to book the hotel room in the Ohana Surf Hotel, which is where the weapon, proceeds from the robbery of the Brown Bottle, and other evidence linking defendant Troiano to the crime were found."

Presumably, the government will contend at trial that Troiano assumed the identity of John Klatt for purposes of securing a room at the hotel. There is also an indication that the government will assert that Troiano pretended to be Klatt with respect to transactions allegedly made by Troiano at a pawnshop.

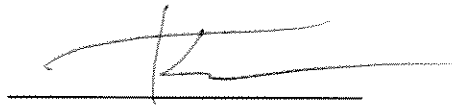
While a separate motion to preclude the uncharged allegation of the Klatt residence burglary will be filed, the instant motion simply aspires to remove the prejudicial contention in the indictment and caption of the case that James Troiano is also known as "John Klatt".

If the prosecution seeks to demonstrate that Troiano used Klatt's license and name for several purposes linked to the Brown Bottle robbery, then it should elicit proof at trial. The jury should not hear from the reading of the indictment (or the recitation of the title of the case during the resumption of all court proceedings), or see the caption of the case on a court

calendar, that Troiano is also known as Klatt. Troiano's right to due process of law is violated by this "extra-evidentiary finding".

FRCR Rule 8(d) permits the court to strike surplusage from the indictment. "Upon the defendant's motion, the court may strike surplusage from the indictment or information." Troiano requests that the court strike "aka: John Klatt" from the indictment and/or title of the case.

DATED: Honolulu, Hawaii February 23, 2006

A handwritten signature in black ink, appearing to read 'T. Eddins', is written over a horizontal line.

TODD EDDINS
ATTORNEY FOR JAMES TROIANO

CERTIFICATE OF SERVICE

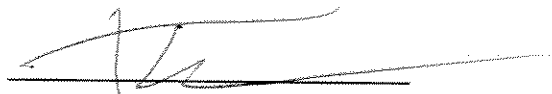
I hereby certify that a copy of the foregoing document was duly served upon the following parties via hand delivery on February 23, 2006.

CLARE CONNORS
Assistant United States Attorney
Room 6100, PJKK Federal Building
300 Ala Moana Blvd.
Honolulu, Hawaii 96850

PAMELA TAMASHRIO
Ocean View Center
707 Richards Street, PH 7
Honolulu, Hawaii 96813

Attorney for DEFNDANT WENDELL TOKI

DATED: Honolulu, Hawaii, February 23, 2006

A handwritten signature in black ink, appearing to read 'T. Eddins', is written over a horizontal line.

TODD EDDINS
ATTORNEY FOR JAMES TROIANO